

## II. REMARKS

In response to the Office Action mailed 10/19/2012, please enter the above-provided amendment and reconsider the application in view of the amendment and the remarks set forth below. It is believed that no new matter has been added and that the amendment places the application in better condition for allowance or appeal. Favorable action is respectfully requested.

In the Office Action dated 10/19/2012, the finality of the Office Action dated 2/28/12 has been withdrawn, and Applicant appreciates the withdrawal of the Office Action.

Applicant understands that the amendment of filed on August 28, 2012, has not been entered, Applicant requests that said amendment not be entered and instead submits the instant amendment.

### Prior Art Rejections

In the Office Action, The Office maintains the Sec. 103 rejection of claims 1-17, 35-74, 86-164, 166-206, 224-291, 309-366, 376-408, 410, 413-430, 450-502, 504-508, 526-536, 538-553, 555-570, 572-631, 726-754, 846-862, 877-878, 884-885, 891-892, 955-962, 973-976, 978-983, 985-988 based on Brown in view of Tarau.

It is respectfully submitted that the rejections for all of the claims are improper pursuant to MPEP Sec. 2111 and the case law cited there, as follows

### **2111 Claim Interpretation; Broadest Reasonable Interpretation [R-9]**

#### ***CLAIMS MUST BE GIVEN THEIR BROADEST REASONABLE INTERPRETATION > IN LIGHT OF THE SPECIFICATION <***

During patent examination, the pending claims must be “given their broadest reasonable interpretation consistent with the specification.” The Federal Circuit’s *en banc* decision in *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005) expressly recognized that the USPTO employs the “broadest reasonable interpretation” standard:

The Patent and Trademark Office (“PTO”) determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction “in light of the specification as it would be interpreted

by one of ordinary skill in the art." *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364[, 70 USPQ2d 1827] (Fed. Cir. 2004). Indeed, the rules of the PTO require that application claims must "conform to the invention as set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description." 37 CFR 1.75(d)(1).

The rejections fail to recognize this standard is qualified by the IN LIGHT OF THE SPECIFICATION portion of the requirement. That is, the proper standard is that the pending claims must be "given their broadest reasonable interpretation *consistent with the specification*."

Applicant maintains the positions set out in Pre-appeal Brief Review Request and the accompanying Petition, both filed on August 28, 2012, and previously filed declarations. The rejections fail to make out a *prima facie* case of obviousness.

Applicant also maintains the view that the rejections are not compliant with the Supreme Court's requirements in KSR and the rejections are improper for this reason as well.

However, as discussed below, the foregoing may be moot in that Applicant has amended the claims.

### **Provisional Double Patenting Rejections**

The double patenting rejections appear to be contrary to the restriction requirements of the instant application and are traversed on this basis. Further, in view of the amendment, the requirement may have to be reconsidered by the Office. In any case, Applicant will address the rejection should it be made in a non-provisional manner after reconsideration in view of the restriction requirement, the instant amendment, and any amendments in the related applications.

### **Office Action Remarks Regarding Shastra**

The Examiner maintains, at page 11, that:

The affidavit under 37 CFR 1.132 filed August 1, 2011 is insufficient to overcome the rejection of claims 1-58 based upon the Shastra as set forth in the last Office action because: applicant's rebuttal lacks evidence to support the assertion that there would be no motivation to combine Shastra collaboration system with a "control computer

database serves as a repository of tokens for other programs to access, thereby affording information to otherwise independent computer systems". The evidence submitted to support the affidavit includes program code, dissertation and articles. Applicant has not pointed to anything specific in disclosed information that speculates or forecasts the utility of the Shastra system. Therefore, the affidavit is insufficient to support the assertion that the Shastra system would not provide motivation to incorporate a "control computer database serves as a repository of tokens for other programs to access, thereby affording information to otherwise independent computer systems".

The Declaration of was not to be considered in isolation, but rather, in the context of an Interview in which the Declaration was discussed. Accordingly, in response to the Office Action remarks at page 11, Applicant is submitting the enclosed Declaration filed in a related application as evidence that the Office Action remarks related to Shastra did not consider, and are not supported by, the totality of the evidence.

More so, the Final Rejections thereafter are improper because they are premised on a mischaracterization of what took place in the Interview of November 17, 2011, as stated in the joint declaration provided herewith. Applicant submits the enclosed joint declaration of Dr. Baja, the professor who oversaw Shastra, and Dr. Hollaar, both of whom participated in the Interview. Applicant requires the Examiner's Declaration or Affidavit if the Examiner maintains any contradiction to the joint declaration submitted herewith as to what took place during the Interview. Applicant submits that the recent prosecution history has been distorted by the improper handling of the Interview, in connection with the Declaration.

#### **Allowable Subject Matter**

Pursuant to the findings by the Office of allowable subject matter on page 12 in that Office Action dated 10/19/2012, Applicant has amended the claims, following the finding, but also adjusting the language according to matters such as antecedent basis and other Sec. 112 matters not previously identified in the record. Applicant has also amended dependent claims, e.g., to avoid double inclusion using language similar to that found as allowable in related application Ser. No. 11/510,351. See page 6 of that Office Action mailed 1/23/2012, and

compare claims 55-57 with the claims from the instant application, e.g., claim 1. Other claim amendments have been made to tidy up the claims. Favorable consideration is respectfully requested.

Although the present communication includes amendments to claims ad argument and characterizations with respect to the claims and the cited art, the Applicant is not conceding in this application that the original claims are not patentable. Rather, any amendment characterization is being made for other reasons, including expeditious prosecution in just the instant application. The Applicant reserves the right to pursue at a later date any previously pending broader or narrower claims that capture any subject matter supported by the present disclosure. Accordingly, reviewers of this prosecution history, or that of any related child application, shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

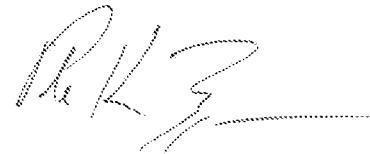
With respect to the present application, the Applicant hereby rescinds any disclaimer of claim scope made in the parent application or any predecessor or related application. The Examiner is advised that any previous disclaimer, if any, and the prior art that it was made to avoid, may need to be revisited. Nor should a disclaimer, if any, in the present application be read back into any predecessor or related application.

The application is believed to be in condition for allowance, and favorable action is requested. If the prosecution of this case can be in any way advanced by a telephone discussion, the Examiner is requested to call the undersigned at (312) 240-0824.

APPLICANT CLAIMS LARGE ENTITY STATUS. The Commissioner is hereby authorized to charge any fees associated with the above-identified patent application or credit any overcharges to Deposit Account No. 50-0235, and if any extension of time is needed, this shall be deemed a petition therefore.

Please direct all communication to the undersigned at the address given below.

Respectfully submitted,



Date: February 19, 2013

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